

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of Commercial)	
Advertisement Loudness)	MB Docket No. 11-93
Mitigation (CALM) Act)	
)	

To: The Commission

REPLY COMMENTS OF HARRIS CORPORATION AND DTS, INC.

Harris Corporation (“Harris”) and DTS, Inc. (“DTS”) respectfully submits these Reply Comments in response to filings submitted regarding the Federal Communications Commission’s (“Commission”) *Notice of Proposed Rulemaking* (“NPRM”)¹ seeking comment on proposed rules implementing the requirements of Commercial Advertisement Loudness Mitigation (“CALM”) Act. Harris, utilizing DTS real time loudness control technology and file-based (non-real time) loudness control, has developed a line of equipment that can control perceived commercial loudness across the workflow of both broadcasters and multichannel video programming distributors (“MVPDs”). Harris and DTS filed Comments in this proceeding to provide the Commission with a background of its technology, the capability of its technology, and to discuss potential means by which broadcasters and MVPDs could demonstrate compliance under the “safe harbor” provision of Section 2(c) of the CALM Act.²

¹ In the Matter of Implementation of the Commercial Advertisement Loudness Mitigation (CALM) Act, Notice of Proposed Rulemaking, MB Docket No. 11-93, FCC 11-84 (rel. May 27, 2011).

² 47 U.S.C. § 621 (2010).

Harris and DTS agree with the assertions by other commenters that under the safe harbor provision a station or MVPD should not be required to produce or keep logs for every commercial it transmits. A station or MVPD should be able to rely on the CALM Act's safe harbor provision "for every commercial it transmits...as long as it implements a *commercially reasonable* process for installing, utilizing and maintaining the equipment and associated software needed to comply with ATSC A/85 Annex J."³ In Comments, Harris and DTS proposed to the Commission a means for broadcasters and MVPDs to demonstrate that equipment has been installed and is being utilized and maintained in a commercially reasonable manner.⁴ These suggestions were not meant to infer that regulated entities under the CALM Act should be required to keep logs of every commercial aired. Such a requirement would be overly burdensome, unreasonable, and unnecessary to meet the plain text requirements of the CALM Act. Harris was merely suggesting that the Commission determine that the production of a log be one mean of demonstrating the utilization of equipment and software that complies with ATSC A/85 RP (specifically Annex J) in a commercially reasonable manner.

Many commenters in this proceeding have noted that the interpretation of the CALM Act's safe harbor provision should be interpreted broadly.⁵ Harris and DTS also support a broad interpretation of the safe harbor provision. In particular, the Commission should interpret the safe harbor provision to permit both technological and contractual approaches in order to achieve compliance under the CALM Act. Harris and DTS believe that a technological approach to

³ *Comments of the National Association of Broadcasters*, MB Docket No. 11-93, pg. 7 (filed Jul. 8, 2011).

⁴ *Comments of Harris Corporation and DTS, Inc.*, MB Docket No. 11-93, pgs. 8-10 (filed Jul. 8, 2011).

⁵ See e.g., *Comments of Verizon*, MB Docket No. 11-93, pgs 15-16 (filed Jul. 8, 2011) (discussing manners in which the Commission should interpret safe harbor in a broader manner than is suggested in the NPRM); *See also Comments of National Cable and Telecommunications Association*, MB Docket NO. 11-93, pg. 10 (filed Jul. 8, 2011) (recommending that the Commission interpret safe harbor broadly to include operator's provision of network commercials as well as locally inserted commercials).

compliance and a contractual approach to compliance are not mutually exclusive. For example, the proposal set forth by National Association of Broadcasters (“NAB”) for determining that a station’s practices are “commercially reasonable” under the CALM Act utilizes elements of both contractual and technological approaches. The NAB’s recommendations provide flexibility, are minimally burdensome, and comply with the intent and plain text of the CALM Act. Harris and DTS endorse NAB’s proposal and would endorse a similarly structured proposal for other regulated entities as a means for demonstrating compliance with the safe harbor provision of the CALM Act.

Specifically, a station’s practice should be deemed “commercially reasonable” if the station:

- *obtains and readies for use equipment that measures the loudness of commercials transmitted to consumers consistent with ATSC A/85 Annex J;*
- *for commercials that the station inserts, uses the equipment in the ordinary course of business to properly measure the loudness of the content and to ensure that the dialnorm metadata value correctly matches the loudness of the content when encoding the audio into AC-3 for transmitting the content to the consumer;*
- *for commercials inserted by third-party programming providers, (1) contractually requires that the third-party make the measurements of the loudness of the commercials and the program content in a manner that is compliant with ATSC A/85 Annex J; (2) contractually requires that the third party either communicate the measured values to the broadcaster or conform the audio to a uniform loudness value; and (3) performs regular quality control measurements of the delivered audio to ensure that the third-party programming provider is meeting these contractual obligations; and*
- *performs periodic calibration of its equipment to ensure that the equipment continues to function in a proper manner and repairs malfunctioning equipment within 60 days.*⁶

Harris and DTS respectfully submit this Reply Comment to the Commission.

Harris and DTS encourage the Commission when establishing a means for compliance under the safe harbor provision to do so in a manner that is broad and minimally

⁶*Comments of NAB, supra note 3, pgs. 7-8.*

burdensome.⁷ Harris does not support Commission action that would require broadcasters or MVPDs utilizing the safe harbor provision to log every commercial and keep a record of that log. Under the safe harbor provision an entity must only demonstrate, in a commercially reasonable manner, the (1) installation, (2) utilization, and (3) maintenance of equipment and associated software that complies with the requirements of the ATSC A/85 RP. Producing a complete log for every commercial is unreasonable and unnecessary. Furthermore, Harris and DTS believes that a contractual and technological approach of compliance under the CALM Act is not mutually exclusive and the proposal set forth by NAB demonstrates this point—a proposal that Harris and DTS endorse.

Harris and DTS look forward to working with the Commission on establishing regulations to implement the provisions of the CALM Act and with the broadcast and MVPD community to implement the appropriate technological solutions.

⁷ “The safe harbor provision should provide regulated entities a uniform and easily achievable means for achieving compliance with the CALM Act. The more burdens that are placed on the regulated entities or the suppliers of loudness equipment, the longer compliance will take and the more costly solutions will become.” *Comments of Harris-DTS*, supra note 4, pg 8.

Respectfully submitted,

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August 1, 2011